

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DONALD J. MCCANN

(Case No. 12076)

A hearing was held after due notice on January 8, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 19.7 feet from the thirty (30) feet front yard setback requirement along East Fairfax Court for a carport. This application pertains to certain real property located on the southeast corner of the intersection of East Fairfax Court and Lord Calvert Drive (911 Address: 32530 East Fairfax Court, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-29.00-620.00.

1. The Board was given copies of the Application, an undated survey of the Property, a building permit, a copy of the minutes for Case No. 9080, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Donald McCann, Scott Brown, Edward Underwood, and Clarence Becker were sworn in to testify about the Application. Richard Berl, Esquire, presented the Application on behalf of the Applicant and submitted exhibits to the Board to review. The exhibits included a photograph, drawings from the contractor, a building permit / sign, and letters from neighbors.
4. The Board found that Mr. Berl stated that the Property is located in the Captain's Grant subdivision.
5. The Board found that Mr. Berl stated that the dwelling was built in 1988 and a one-car garage was added in the early 1990s.
6. The Board found that Mr. Berl stated that the Applicant purchased the Property in July 2013 and added a carport. The carport is used to protect the Applicant's car from the elements.
7. The Board found that Mr. Berl stated that the Applicant retained Mr. Brown to construct the carport.
8. The Board found that Mr. Brown testified that he is a general contractor and he entered into a contract with the Applicant to construct the carport. He obtained the building permit for the carport and he left a copy of a schematic of the carport with the building permit office.
9. The Board found that Mr. Brown testified that he was not notified by any Sussex County officials about issues with the proposed location of the carport.
10. The Board found that Mr. Brown testified that the building permit states that the setback from East Fairfax Court is 30 feet but no Sussex County official pointed this out to him when he obtained the permit. He assumed that he would be able to build the carport as proposed since he was not told otherwise by Sussex County. If he had known about the encroachment at that time, he would not have constructed the carport.
11. The Board found that Mr. Berl stated that Mr. Brown reasonably relied on Sussex County officials at the time the building permit was issued.

12. The Board found that Mr. Berl stated that the Property is a corner lot thereby reducing the building envelope.
13. The Board found that Mr. Berl stated that the garage was already in existence at the time the Applicant acquired the Property and the construction of the carport off the garage was the only logical place the carport could be located.
14. The Board found that Mr. Berl stated that the Applicant would not have constructed the carport had he known of the encroachment and the Applicant reasonably believed that all necessary approvals had been obtained.
15. The Board found that Mr. Berl stated that the variance has no adverse effect on the neighborhood and most of the neighbors have submitted letters supporting the Application.
16. The Board found that Mr. Berl stated that the variance requested is the minimum variance necessary to afford relief.
17. The Board found that Mr. Becker testified that he is a neighbor of the Applicant. He believes that the carport is a nice carport. He and his neighbors do not object to the carport.
18. The Board found that Mr. Underwood testified that he lives across the street from the Applicant. He has no issue with the carport and believes that the carport enhances the neighborhood.
19. The Board found that Mr. McCann affirmed the statements made by Mr. Berl as true and correct.
20. The Board found that Mr. Brown testified that it would cost at least \$5,000.00 to remove the carport because it is connected to the garage and the roof of the garage would need to be repaired.
21. The Board found that Mr. McCann testified that the Property is served by central water and sewer but was previously serviced by well and septic.
22. The Board found that Mr. McCann testified that there are no visibility concerns with the intersection of Lord Calvert Drive and East Fairfax Court. The carport is 26 feet from the edge of paving of East Fairfax Court
23. The Board found that Mr. McCann testified that the neighbor most impacted by the encroachment supports the Application and that he has received no complaints about the encroachment
24. The Board found that no parties appeared in support of or in opposition to the Application
25. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique as it is a corner lot with a curved property line at the intersection of East Fairfax Court and Lord Calvert Drive. The dwelling was constructed at the appropriate setback distances from those roads but was placed to face the intersection rather than East Fairfax Court, which is considered the front yard of the Property. This unique development of the Property by a prior owner has limited the area where other structures could reasonably be located on the lot. If the home were placed parallel to East Fairfax Court, there would be more room for structures on the lot. These unique physical conditions have created an exceptional practical difficulty for the Applicant who seeks to retain a small carport on the Property.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to retain a small carport adjacent to the existing garage but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of

the Property as the variance will allow a reasonably sized carport to remain on the Property. The carport protects the Applicant's vehicle from the elements. The Board is convinced that the shape and location of the carport are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The location of the carport allows for reasonable access to the garage and to East Fairfax Court. Based on the survey, there appears no other location where the carport could be located.


- c. The exceptional practical difficulty was not created by the Applicant. There was no evidence that the Applicant created the lot or developed it with the dwelling facing the intersection rather than East Fairfax Court. This unique condition has created an unusually shaped and limited building envelope which is further limited by the corner yard setback requirement. These conditions have created the exceptional practical difficulty for the Applicant who seeks to retain a reasonably sized carport on the lot.
- d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the carport will have no effect on the character of the neighborhood. The carport is an open structure with no sides which would affect visibility on the adjacent roads. The carport is also located approximately 26 feet from the edge of paving of East Fairfax Court so the encroachment into the front yard setback area is likely difficult to notice. Furthermore, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, neighbors have indicated their support of the Application.
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain a reasonably sized carport on the Property. The carport is located adjacent to the existing garage and there is no other place where it could reasonably be located. No additions or modifications to the carport as proposed.

The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor were Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. John Mills did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within one (1)
year from the date below the application
becomes void.

Date March 6, 2018